

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 96-0630
Sales and Use Tax
For The Tax Periods: 1993, 1994, 1995**

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ISSUES

I. **Sales/Use Tax – Delivery Charges**

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 26-1-2-401, 45 IAC 2.2-4-1, 45 IAC 2.2-4-3.

The Taxpayer protests the Department's assessment of sales/use tax on delivery charges.

STATEMENT OF FACTS

The Taxpayer is a retailer of appliances. The customer pays for the appliances in the store and may take the item with them. The Taxpayer owns and operates its own delivery truck and will deliver the item to the customer for a fee. The delivery charge is stated separately on the customer's receipt. Taxpayer also subcontracted out some of the deliveries in the last half of 1995. More facts supplied as necessary.

I. **Sales/Use Tax: Delivery Charges**

DISCUSSION

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. A retail transaction is defined generally as the acquiring and subsequently selling of tangible personal property. IC 6-2.5-4-1. During the audit, the Taxpayer was assessed sales/use tax on delivery charges. IC 5-2.5-4-1(e) states:

The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

- (1) the price of the property transferred, without the rendition of any service; and

- (2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records. (emphasis added)

In addition, 45 IAC 2.2-4-1(3) states: "No deduction from gross receipts is permitted for services performed or work done on behalf of the seller prior to transfer of such property at retail." Therefore, the delivery must take place prior to transfer of the goods in order for the Department to assess sales tax on the charge associated with that service.

Also, pursuant to IC 26-1-2-401:

Each provision of IC 26-1-2 with regard to the rights, obligations, and remedies of the seller, the buyer, purchasers, or other third parties applies irrespective of title to the goods, except where the provision refers to such title. Insofar as situations are not covered by the other provisions of IC 26-1-2 and matters concerning title become material, the following rules apply:

....

- (3) Unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods...

45 IAC 2.2-4-3 states:

- (a) Separately stated delivery charges are considered part of selling at retail and subject to sales and use tax if the delivery is made by or on behalf of the seller of property not owned by the buyer.
- (b) The following guidelines have been developed:
 - (1) Delivery charge separately stated with F.O.B. destination-taxable.
 - (2) Delivery charge separately stated with F.O.B. origin-non taxable.
 - (3) Delivery charge separately stated where no F.O.B. has been established-non taxable.
 - (4) Delivery charges included in the purchase price are taxable.

Here, the Taxpayer does not show an explicit agreement that title passed prior to the delivery. Although the customer pays for the item in the store, the Taxpayer does not establish that the risk of loss has also transferred to the customer. Consequently, the transfer can not be said to occur until after the delivery is complete. While 45 IAC 2.2-4-3(b) states that delivery charges are not taxable where no F.O.B. has been established, this subsection does not apply to this case because the Taxpayer has not shown an explicit agreement pursuant to IC 26-1-2-401.

FINDING

The Taxpayer's protest is respectfully denied.